



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0771]

RIN 1625-AA00

Safety Zone; Port Huron Float-Down, St. Clair River, Port Huron, MI.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone on the St. Clair River, Port Huron, MI. This zone is intended to restrict vessels from a portion of the St. Clair River during the Port Huron Float-Down. Though this is an unsanctioned, non-permitted event, this temporary safety zone is necessary to protect spectators and vessels from the hazards associated with river tubing and Float-Down events.

DATES: This rule is effective from 11 a.m. to 8 p.m. on August 19, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0771]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box, and click "Search." You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313)568-9508, e-mail

Adrian.F.Palomeque@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

#### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause

finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this year's event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with this Coast Guard exercise.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the same reasons discussed in the preceding paragraph, waiting for 30 day notice period run would be impracticable and contrary to the public interest.

As is discussed further below, the Port Huron Float-Down has taken place each of the last three years. During each year's event, the Float-Down has drawn thousands of floaters and spectators. Because of the high concentration

of floaters and spectators, the Coast Guard has previously established a safety zone in the location of the Float-Down to better protect the public. For example, in 2011, the Coast Guard enforced a safety on August 21<sup>st</sup> (76 FR 52269). Consequently, not only is it impracticable and contrary to the public interest to delay this rule, a notice comment period and delayed effective date are also unnecessary because of the public's expected awareness of the Coast Guard's safety zone.

B. Basis and Purpose

On August 19, 2012, a non-permitted public event has been advertised over various social-media sites in which a large number of persons may float down a segment of the St. Clair River, using inner tubes and other similar floatation devices. The 2012 Float-Down event will occur between about 11 a.m. and 8 p.m. on August 19, 2012. This event took place in 2009, 2010, and 2011. Although it did not receive a state or federal permit over these past years, the event drew in over 3,000 participants. Despite the plan put together by the federal, state and local officials, emergency responders and law enforcement officials were overwhelmed with medical emergencies, people drifting across the international border, and people trespassing on residential property when trying to get out

of the water before the designated finish line.

Promotional information for the event continues to be published, and more than 3,000 people are anticipated to float down the river this year.

Based on the amount of public participation and safety concerns identified in 2009, 2010, and 2011, the Captain of the Port Detroit has determined that the 2012 Float-Down poses significant risks to public safety and property. The likely combination of large numbers of participants, strong river currents, limited rescue resources, and difficult emergency response scenarios could easily result in serious injuries or fatalities to Float-Down participants and spectators. Establishing a safety zone to control vessel entry into the location of the proposed Float-Down will help ensure the safety of persons and property and minimize the associated risks.

#### C. Discussion of Rule

This safety zone is necessary to ensure the safety of spectators, vessels, and the public from the hazards associated with the Port Huron Float-Down. This rule will be in effect and the safety zone will be enforced from 11 a.m. to 8 p.m. on August 19, 2012.

The safety zone will begin at Lighthouse Beach and encompass all U.S. waters of the St. Clair River bound by a

line starting at a point on land north of Coast Guard Station Port Huron at position 43°00'25"N; 082°25'20"W, extending east to the international boundary to a point at position 43°00'25"N; 082°25'02"W, following south along the international boundary to a point at position 42°54'30"N; 082°27'41"W, extending west to a point on land (just north of Stag Island) at position 42°54'30"N; 082°27'58"W, and following north along the U.S. shoreline to the point of origin. All geographic coordinates are North American Datum of 1983 [NAD 83].

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563,

Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities

during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the St. Clair River on August 19, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only nine hours on one day. Furthermore, the safety zone may conclude earlier if the Captain of the Port determines that the safety hazards have been mitigated before 8:00 p.m. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions



concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order

12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the

discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0771 to read as follows:

§ 165.T09-0771 Safety Zone; Port Huron Float-Down, St. Clair River, Port Huron, MI

(a) Location. The safety zone will begin at Lighthouse Beach and encompass all U.S. waters of the St. Clair River, Port Huron, MI, bound by a line starting at a point on land north of Coast Guard Station Port Huron at position 43°00'25"N; 082°25'20"W, extending east to the international

boundary to a point at position 43°00'25"N; 082°25'02"W, following south along the international boundary to a point at position 42°54'30"N; 082°27'41"W, extending west to a point on land (just north of Stag Island) at position 42°54'30"N; 082°27'58"W, and following north along the U.S. shoreline to the point of origin. (DATUM: NAD 83).

(b) Effective and enforcement period. This regulation is effective and will be enforced from 11 a.m. until 8 p.m. on August 19, 2012.

(c) Regulations. (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via

VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. The Captain of the Port Detroit or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit, or his on-scene representative.

Dated: August 6, 2012

J. E. Ogden  
Captain, U. S. Coast Guard  
Captain of the Port Detroit

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